

March 30 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

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ATTORNEYS FOR JAMES W. SPANGELO

FILED

MAR 30 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**BEFORE THE COMMISSION ON PRACTICE
OF THE SUPREME COURT OF THE STATE OF MONTANA**

* * * * *

**IN THE MATTER OF JAMES W.
SPANGELO,**

An Attorney at Law,

Respondent.

) Supreme Court Cause No. PR10-0038
) ODC File No. 08-223
)

) **MR. SPANGELO'S ANSWER TO ODC'S
) COMPLAINT**
)

James W. Spangelo, by and through his attorney of record, Michael F. McMahon,
hereby submits his Answer to the Office of Disciplinary's ("ODC") Complaint, and states and
alleges to the Commission on Practice as follows:

I.

Mr. Spangelo denies each and every allegation of ODC's Complaint except those
hereinafter admitted, qualified or explained.

II.

Mr. Spangelo admits the allegations of paragraphs 1, 4, 6, 9, 10, 11, 12, 13, 22 and 28
of ODC's Complaint.

III.

Mr. Spangelo, in response to paragraph 2 of ODC's Complaint, admits the allegations of
paragraph 2 only insofar that with respect to the allegations asserted against him, the Montana

1 Rules of Professional Conduct ("Rules") that were in effect prior to April 1, 2004 were approved
2 and adopted by the Montana Supreme Court as well as their amendments which became
3 effective on April 1, 2004, and that the application and interpretation of the pre-April 1, 2004
4 Rules are required in most instances of his alleged misconduct in this proceeding and not as
5 alleged by ODC in the application of the post April 1, 2004 Rules.

6 IV.

7 Mr. Spangelo, in response to paragraph 3 of ODC's Complaint, re-alleges and
8 incorporates his responses set forth above in paragraphs I through III.

9 V.

10 Mr. Spangelo admits the allegations of paragraph 5 of ODC's Complaint only insofar
11 that it alleges: (1) on April 22, 1999, Ms. Rex, an Idaho resident and Mrs. Delbom's former
12 daughter-in-law, asked him to handle the Delbom probate for the purpose of locating allegedly
13 missing assets; (2) Ms. Rex asked to appointed personal representative; and (3) Mr. Spangelo
14 agreed to represent the Delbom Estate, and denies the remaining allegations of paragraph 5 of
15 ODC's Complaint.

16 VI.

17 Mr. Spangelo admits the allegations of paragraph 7 of ODC's Complaint only insofar
18 that it alleges: (1) Ms. Rex's February 23, 2001 letter was received via U.S. mail at
19 Mr. Spangelo's office; (2) Mr. Spangelo did not see Ms. Rex's February 23, 2001 letter; and (3)
20 Ms. Rex's letter speaks for itself, and denies the remaining allegations of paragraph 7 of ODC's
21 Complaint.

22 VII.

23 Mr. Spangelo admits the allegations of paragraph 8 of ODC's Complaint only insofar
24 that it alleges: (1) Mr. Brown contacted him sometime in April 2001 to discuss the matter; (2)
25 he incorrectly originally represented to ODC that he informed Mr. Brown that he would not sign

1 a substitution of counsel without some kind of payment for all of the work that he had done to
2 that point; (3) Mr. Brown declined to represent to the Estate and/or Ms. Rex as a result of a
3 potential office related conflict; and denies the remaining allegations of paragraph 8 of ODC's
4 Complaint.

5 **VIII.**

6 Mr. Spangelo admits the allegations of paragraph 14 of ODC's Complaint only insofar
7 that it alleges: (a) he represented to the District Court that Ms. Rex had disappeared and that
8 he believed she was deceased; (b) the District Court appointed him as substitute/special
9 personal representative to transfer the Hill County mineral interest to him and close the estate;
10 (c) the District Court allowed him to transfer the Hill County mineral interests to him based upon
11 his sworn testimony for his legal services and close the estate; and denies the remaining
12 allegations of paragraph 14 of ODC's Complaint.

13 **IX.**

14 Mr. Spangelo admits the allegations of paragraphs 15 and 16 of ODC's Complaint only
15 insofar that they allege he violated Rule 1.16.

16 **X.**

17 Mr. Spangelo, in response to paragraph 17 of ODC's Complaint, re-alleges and
18 incorporates his responses set forth above in paragraphs I through IX.

19 **XI.**

20 Mr. Spangelo admits the allegations of paragraph 18 of ODC's Complaint only insofar
21 that it alleges: (1) the pleadings he filed in 2001 were sent to Ms. Rex at the address she
22 provided to him; and (2) he mistakenly failed to correct the use of utilizing her former address to
23 Ms. Rex's subsequent address change that she provided and that was provided by Mr. Brown;
24 and denies the remaining allegations of paragraph 18 of ODC's Complaint.

25 ///

XII.

Mr. Spangelo admits the allegations of paragraph 19 of ODC's Complaint only insofar that it alleges Ms. Rex is not deceased, and denies the remaining allegations of paragraph 19 of ODC's Complaint.

XIII.

Mr. Spangelo admits the allegations of paragraph 20 of ODC's Complaint only insofar that it alleges since he did not have actual knowledge of Ms. Rex's discharge of his services in 2001, he did not advise the District Court that Ms. Rex discharged him in 2001, and denies the remaining allegations of paragraph 20 of ODC's Complaint.

XIV.

Mr. Spangelo admits the first sentence of paragraph 21 of ODC's Complaint, and denies the remaining allegations of paragraph 21 of ODC's Complaint.

XV.

Mr. Spangelo, in response to paragraph 24 of ODC's Complaint, re-alleges and incorporates his responses set forth above in paragraphs I through XIV.

XVI.

Mr. Spangelo admits the allegations of paragraphs 25 and 26 of ODC's Complaint only to the extent that they allege he violated Rules 1.3 and 1.4, and denies the remaining allegations of paragraphs 25 and 26 of ODC's Complaint.

XVII.

Mr. Spangelo, in response to paragraph 27 of ODC's Complaint, re-alleges and incorporates his responses set forth above in paragraphs I through XVI.

XVIII.

Mr. Spangelo admits the allegations of paragraph 29 of ODC's Complaint only insofar that it alleges he violated Rule 1.5, and denies the remaining allegations of paragraph 29 of

1 ODC's Complaint.

2 **XIX.**

3 Mr. Spangelo affirmatively alleges that unique factors exist to mitigate the applicable
4 discipline to be recommended by the Montana Commission on Practice and imposed by the
5 Montana Supreme Court relative to his admitted violations of Rules 1.3, 1.4, 1.5 and 1.16 (all
6 pre-2004 amendments).

7 WHEREFORE, James W. Spangelo, having fully answered ODC's Complaint, prays
8 that following a hearing before an Adjudicatory Panel of the Commission, it makes a report and
9 recommends to the Montana Supreme Court that he be publicly censured by the Montana
10 Supreme Court and that he be ordered to pay the assessed costs of this proceeding to be fixed
11 by the Commission on Practice subject to the provisions of Rule 9(8), MRLDE, as the
12 appropriate discipline for his violation of Rules 1.3, 1.4, 1.5 and 1.16 (all pre-2004
13 amendments) of the Montana Rules of Professional Conduct.

14 Dated this 29th day of March 2010.

15 **McMAHON LAW FIRM, PLLC**

16
17 By


18 **Michael F. McMahon**

212 North Rodney
Helena, MT 59601

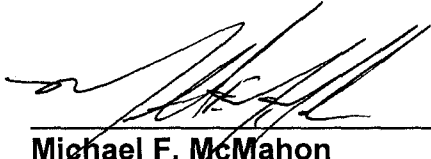
19 **ATTORNEYS FOR JAMES W. SPANGELO**

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **MR. SPANGELO'S ANSWER TO ODC'S COMPLAINT** was served upon the following by mailing a true and correct copy thereof on **March 29, 2010**, addressed as follows:

**SHAUN THOMPSON
OFFICE OF DISCIPLINARY COUNSEL
PO BOX 1099
HELENA MT 59624-1099**

**SHAUNA RYAN
COMMISSION ON PRACTICE
PO BOX 203002
HELENA MT 59620-3002**



Michael F. McMahon